



EPA Region 5 Records Ctr.



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U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

P.O. Box 7611

Washington, D.C. 20044-7611

Telephone: (202) 514-4213

Facsimile: (202) 616-6584

90-11-3-1620/2

August 29, 2001

VIA FEDERAL EXPRESS

Gerald Kaminski
Assistant United States Attorney
United States Attorney's Office
220 Potter Stewart U.S. Courthouse
100 East Fifth St.
Cincinnati, OH 45202

Re: United States v. Aeronca, Inc. et al.
Filing an Amended Complaint; Serving the Complaint on the Dick Clarke entities;

Dear Gerry:

I have enclosed an Amended Complaint in the above-referenced action for filing on August 31, 2001. A Motion for Leave to File the Amended Complaint is not necessary because this Amended Complaint is being filed before a responsive pleading is due. **The Amended Complaint must be filed on August 31, 2001, because of statute of limitation issues.** I will be on vacation on August 31, 2001, but if you have any trouble filing this Amended Complaint on Friday, August 31, 2001, I would ask you to call both my voice mail at my office (202 514-4213) and, if it is morning, 419 865-0209 (my brother's office number; he will know how to get a hold of me), or, if it is afternoon, 419 865-0209.

I have also attached three summonses for the three new entities named in the complaint: Clarke, Inc; Clarke's Services, Inc; and Richard M. Clarke. As we discussed, I am asking that these summonses be served by hand-delivery. All three may be served on Richard M. Clarke. I suspect that reaching him at the address listed on the summonses for the two companies is the easiest manner of finding Mr. Clarke. I spoke to Deputy Romey at the U.S. Marshal's Service and he indicated that they would be able to effectuate service so long as I did not demand it within 2 days of the Marshal's office receiving it. I indicated that so long as they could try to effectuate service within 2 weeks after the filing, that would be fine. He did not seem to think that would be a problem.

I would appreciate it if your office would prepare whatever papers are necessary to request the services of the U.S. Marshal's for service of the summons and Amended Complaint. Please keep in mind that the Marshals must receive **three (3) signed summonses**: one for Clarke, Inc., one for Clarke's Services, Inc., and one for Richard M. Clarke. Obviously, after

you have signed the Amended Complaint, one copy of the Amended Complaint must be attached to each of the summonses.

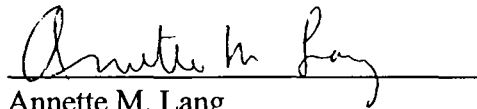
I would appreciate it if you could deliver the summonses and attached Amended Complaints to the U.S. Marshal on Friday, August 31, 2001 (the day the Amended Complaint must be filed).

Finally, I would appreciate it if your office would send me a file-stamped copy of the Amended Complaint after it has been filed and a copy of completed Summonses once service is effectuated.

If you have any questions, please do not hesitate to call me.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Annette M. Lang", is written over a horizontal line.

Annette M. Lang
Trial Attorney

cc: Craig Melodia, EPA (by regular mail)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AERONCA, INC. (f/k/a Aeronca
Manufacturing Corp. f/k/a/ Aeronca
Aircraft),

CLARKE CONTAINER INC.,
CLARKE'S INCINERATORS, INC.
JOHN J. WHITTON TRUCKING, INC.
CLARKE'S SERVICES, INC.,
CLARKE, INC.,
RICHARD M. CLARKE,

Defendants.

CIVIL ACTION NO. C-1-01-439
JUDGE BECKWITH

AMENDED COMPLAINT

(Filed as of Right Prior to the Due Date of a Responsive Pleading)

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), files this amended complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for recovery of response costs incurred by the United States in responding

to releases or threatened releases of hazardous substances at or from the Skinner Landfill Superfund Site in West Chester, Ohio (the "Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks declaratory relief that Defendants are jointly and severally liable for all future response costs that the United States may incur as a result of the release or threatened release of hazardous substances at or from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. § 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), because the claims arose and the releases or threatened releases of hazardous substances that give rise to the claims occurred in this district.

DEFENDANTS

4. Aeronca, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

5. Clarke Container, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

6. Clarke's Incinerators, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

7. Clarke's Services, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

8. Clarke, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

9. Richard M. Clarke is a natural person, and upon information and belief, is a resident of the State of Ohio. At relevant times, Richard M. Clarke was the sole shareholder of Clarke Services, Inc., and was the shareholder distributee of proceeds from a 1984 sale of the assets of Clarke Services, Inc. to Browning-Ferris Industries of Ohio, Inc. At relevant times, Richard M. Clarke did business as "Dick Clarke Co.," an unincorporated, sole proprietorship.

10. John J. Whitton Trucking, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

11. Each of the above-captioned Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Each of the Defendants except John J. Whitton Trucking, Inc. is a person who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned by each such Defendant at the Site, as described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), or accepted hazardous substances for transport to disposal or treatment at the Site, and selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

13. In July of 1990, a sole proprietorship that did business as Dick Clarke Co. was incorporated as Clarke, Inc. Clarke, Inc. was a mere continuation of the ongoing business of Dick Clarke Co. Clarke, Inc. succeeded to the liabilities of Dick Clarke Co.

14. In December of 1993, a sole proprietorship that did business as John J. Whitton Trucking Co. was incorporated as John J. Whitton Trucking, Inc. John J. Whitton Trucking, Inc. was a mere continuation of the ongoing business of John J. Whitton Trucking Co. John J. Whitton Trucking, Inc. succeeded to the liabilities of John J. Whitton Trucking, Co.

THE SKINNER LANDFILL SUPERFUND SITE

15. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including but not limited to paint wastes, ink wastes, creosote, pesticides and other chemical wastes, and construction debris containing hazardous substances have been dumped, poured, emitted, discharged or otherwise disposed of onto land surface or subsurface strata at the Site. Elevated levels of hazardous substances, including 1,1-dichloroethane, 1,2-dichloroethane, 1,2-dichloroethene, 1,2-dichloropropane, chloroethane, ethylbenzene, chloroform, trichloroethene 1,3-dichlorobenzene, 1,4-dichlorobenzene, naphthalene, and vinyl chloride have been detected in groundwater at the Site.

17. There have been "releases" or threatened releases of "hazardous substances" into the "environment" at the Site within the meaning of Sections 101(22), 101(14) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (14).

18. As a result of the release or threatened releases of hazardous substances into the environment at the Site, the United States has incurred response costs, and may incur future response costs including investigative, administrative, and legal costs.

CLAIM FOR RELIEF

19. The allegations contained in paragraphs 1 - 18 are realleged and incorporated herein by reference.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (a) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (b) of this section –
 - (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
 - (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--
 - (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan. . . .

21. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in part:

In any such action . . . [for recovery of the costs referred to in section 9607 of this title or for natural resource damages], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

22. As a result of releases or threatened releases of hazardous substances at the Site, the United States has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). As of May 31, 2000, the United States has incurred response costs of at least

\$4.3 million in responding to the release or threatened release of hazardous substances at or from the Site.

23. The response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

24. Aeronca, Inc. is a member of the class of liable parties described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). The remaining defendants (the "transporter defendants") are members, or successors to members, of the class of liable parties described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Each of the transporter defendants selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

25. Each Defendant is jointly and severally liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for of the response costs incurred by the United States in connection with the Site, including enforcement costs.

26. Each Defendant is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for prejudgment interest on those response costs for which a demand for payment was made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of the United States and against all the Defendants, jointly and severally, for the response costs incurred by the United States, including prejudgment interest, for response actions related to the Site;


2. Enter a declaratory judgment that the Defendants are jointly and severally liable for all future response costs to be incurred by the United States for response actions related to the Site;

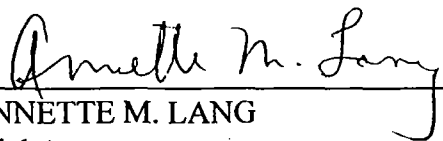
3. Award the United States its costs in this action; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

for 
W. BENJAMIN FISHEROW
Deputy Section Chief
Environment Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice


ANNETTE M. LANG
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4213

SALVADOR DOMINGUEZ
United States Attorney
Southern District of Ohio

GERALD F. KAMINSKI
(Ohio Bar No. 0012532)
Assistant United States Attorney
Southern District of Ohio
220 U.S.P.O. & Courthouse
100 E. 5th Street
Cincinnati, Ohio 45202
(513) 684-3711

OF COUNSEL:

CRAIG MELODIA
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

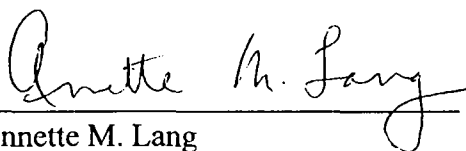
CERTIFICATE OF SERVICE

I hereby certify that on this 31th day of August 2001, I caused a true copy of the foregoing Amended Complaint to be served by first-class mail, postage pre-paid on the following counsel:

David E. Northrop, Esq.
Porter Wright Morris & Arthur
41 S. High St.
Columbus, OH 43215-6194
(Attorney for Aeronca)

Kevin J. Hopper, Esq.
Southampton Square
7434 Jager Ct.
Cincinnati, OH 45230
(Attorney for John J. Whitton Trucking)

Jonathon Conte, Esq.
Blank Rome Comisky & McCauley LLP
PNC Center
201 E. Fifth St., Suite 1700
Cincinnati, OH 45202
(Attorney for Clarke Container and Clarke Incinerators)


Annette M. Lang

United States District Court

SOUTHERN DISTRICT OF OHIO

SUMMONS IN A CIVIL CASE

UNITED STATES OF AMERICA

V.

AERONCA, et al.

CASE NUMBER: C-1-01-439

TO: (Name and address of defendant)

Clarke's Services, Inc.
9740 Cincinnati Dayton Rd.
West Chester, OH 45069

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Annette M. Lang
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this
Court within a reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify) _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 the Federal Rules of Civil Procedure.

United States District Court

SOUTHERN DISTRICT OF OHIO

SUMMONS IN A CIVIL CASE

UNITED STATES OF AMERICA

V.

AERONCA, et al.

CASE NUMBER: C-1-01-439

TO: (Name and address of defendant)

Clarke, Inc.

9740 Cincinnati Dayton Rd.

West Chester, OH 45069

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Annette M. Lang

United States Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20044-7611

an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this
Court within a reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify) _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 the Federal Rules of Civil Procedure.

United States District Court

SOUTHERN DISTRICT OF OHIO

SUMMONS IN A CIVIL CASE

UNITED STATES OF AMERICA

V.

AERONCA, et al.

CASE NUMBER: C-1-01-439

TO: (Name and address of defendant)

Richard M. Clarke

9737 Crestfield Dr.

West Chester, OH 45069

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Annette M. Lang

United States Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, D.C. 20044-7611

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹

DATE

NAME OF SERVER (PRINT)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify) _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 the Federal Rules of Civil Procedure.

LIANG

FILED

IN THE UNITED STATES DISTRICT COURT
JUN 29 2001 FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

AERONCA, INC. (f/k/a Aeronca
Manufacturing Corp. f/k/a/ Aeronca
Aircraft),
CLARKE CONTAINER, INC.,
CLARKE'S INCINERATORS, INC.,
JOHN J. WHITTON TRUCKING, INC.,

Defendants.

6-10-01-439

CIVIL ACTION NO.
JUDGE

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for recovery of response costs incurred by the United States in responding to releases or threatened releases of hazardous substances at or from the Skinner Landfill

JUL 3 2001

Superfund Site in Westchester, Ohio (the "Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks declaratory relief that Defendants are jointly and severally liable for all future response costs that the United States may incur as a result of the release or threatened release of hazardous substances at or from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. § 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), because the claims arose and the releases or threatened releases of hazardous substances that give rise to the claims occurred in this district.

DEFENDANTS

4. Aeronca, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

5. Clarke Container, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

6. Clarke's Incinerators, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

7. John J. Whitton Trucking, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

8. Each of the above-captioned Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Each of the Defendants except John J. Whitton Trucking, Inc. is a person who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by each such Defendant at the Site, as described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), or accepted hazardous substances for transport to disposal or treatment at the Site, and selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

10. In December of 1993, a sole proprietorship that did business as John J. Whitton Trucking Co. was incorporated as John J. Whitton Trucking, Inc. John J. Whitton Trucking, Inc. was a mere continuation of the ongoing business of John J. Whitton Trucking Co. John J. Whitton Trucking, Inc. succeeded to the liabilities of John J. Whitton Trucking, Co.

THE SKINNER LANDFILL SUPERFUND SITE

11. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including but not limited to paint wastes, ink wastes, creosote, pesticides and other chemical wastes, and construction debris containing hazardous substances have been

dumped, poured, emitted, discharged or otherwise disposed of onto land surface or subsurface strata at the Site. Elevated levels of hazardous substances, including 1,1-dichloroethane, 1,2-dichloroethane, 1,2-dichloroethene, 1,2-dichloropropane, chloroethane, ethylbenzene, chloroform, trichloroethene 1,3-dichlorobenzene, 1,4-dichlorobenzene, naphthalene, and vinyl chloride have been detected in groundwater at the Site.

13. There have been "releases" or threatened releases of "hazardous substances" into the "environment" at the Site within the meaning of Sections 101(22), 101(14) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (14).

14. As a result of the release or threatened releases of hazardous substances into the environment at the Site, the United States has incurred response costs, and may incur future response costs including investigative, administrative, and legal costs.

CLAIM FOR RELIEF

15. The allegations contained in paragraphs 1 - 14 are realleged and incorporated herein by reference.

16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (a) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (b) of this section –
 - (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan. . . .

17. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in part:

In any such action . . . [for recovery of the costs referred to in section 9607 of this title or for natural resource damages], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

18. As a result of releases or threatened releases of hazardous substances at the Site, the United States has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). As of May 31, 2000, the United States has incurred response costs of at least \$4.3 million in responding to the release or threatened release of hazardous substances at or from the Site.

19. The response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

20. Aeronca, Inc. is a member of the class of liable parties described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). The remaining defendants (the "transporter defendants") are members, or successors to members, of the class of liable parties described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Each of the transporter defendants selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

21. Each Defendant is jointly and severally liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the response costs incurred by the United States in connection with the Site, including enforcement costs.

22. Each Defendant is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for prejudgment interest on those response costs for which a demand for payment was made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of the United States and against all the Defendants, jointly and severally, for the response costs incurred by the United States, including prejudgment interest, for response actions related to the Site;


2. Enter a declaratory judgment that the Defendants are jointly and severally liable for all future response costs to be incurred by the United States for response actions related to the Site;

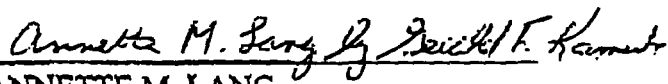
3. Award the United States its costs in this action; and

4. Grant such other and further relief as the Court deems just and proper.

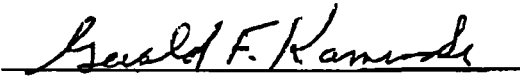
Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice


W. BENJAMIN FISHEROW
Depury Section Chief
Environment Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice


ANNETTE M. LANG
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
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